

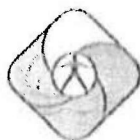


EPA Region 2 Sign-in Sheet – Please Print

Meeting: AES Coal Ash

Date: 3/28/13

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COMMONWEALTH OF PUERTO RICO
OFFICE OF THE GOVERNOR
ENVIRONMENTAL QUALITY BOARD

Office of the President

March 27, 2013

VIA E-MAIL *cohen.mitchell@epa.gov*
AND REGULAR MAIL

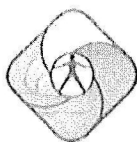
Mitchell Cohen, Esq.
United States Environmental Protection Agency, Region 2
Office of Regional Counsel
Water & General Law Branch / General Law Team
290 Broadway
Floor 16
New York, NY 10007

Re: Freedom of Information Act Request Letter
AGREMAXTM generated by AES Puerto Rico L.P.
Guayama, Puerto Rico

Dear Mr. Cohen:

This is a request under the Freedom of Information Act. On behalf of the Puerto Rico Environmental Quality Board (PREQB), I request that a copy of the following documents, or documents containing the following information, be provided to the agency:

- Studies, results and reports generated as part of tests conducted to coal combustion residues samples collected from the AES Puerto Rico L.P. coal fired plant in Guayama, Puerto Rico.
- Studies, results and reports generated as part of tests conducted to AGREMAXTM samples collected from the AES Puerto Rico L.P. coal fired plant in Guayama, Puerto Rico.
- Studies, results, reports, correspondence, memorandums and any other document regarding the uses and applications for coal combustion residues from the AES Puerto Rico L.P. coal fired plant in Guayama, Puerto Rico.
- Any document related to construction projects where AGREMAXTM has been used as filler material.
- Reports, notes, memorandums, correspondence, pictures, graphs and videos from inspections associated with coal combustion residues from the AES Puerto Rico L.P. coal fired plant in Guayama, Puerto Rico.



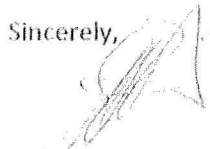
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The PREQB is currently engaged in investigating various citizen complaints and a legislative inquiry regarding the use of AGREMAXTM as filler material in construction projects throughout the southern region of Puerto Rico. In addition, our agency is analyzing possible regulatory scenarios for coal combustion residues resulting from AES' operation. Therefore, we respectfully request an expedite processing and a waiver of all fees for this request.

Thank you for your consideration of this request.

Sincerely,



Ellud Gerena
Special Advisor to the President



Environmental Issues

Superseded

(click here for current version ->)

Subject	AES Agremax	Location	Street Address: City: Guayama State: PR Zip Code:
Contact	<u>George Meyer</u>	Phone	212-637-4070
Department	DECA-RCB		
Last Updated	02/20/2013 04:09 PM		

The widespread land placement of "Agremax," an aggregate made of ash generated by the AES coal fired power plant in Guayama, Puerto Rico and sold as a "product" under a PR Environmental Quality Board (EQB) solid waste exemption, may present significant environmental and health risks from leaching heavy metals. The environmental group Earthjustice, on behalf of several PR environmental advocates, has urged the Region to address the issue through use of its imminent and substantial endangerment authority under RCRA Section 7003, and the national environmental group Public Justice has issued a notice of intent to sue AES under RCRA §7002, but has delayed taking suit.

Notice of Intent to Sue

In September 2012, the environmental group Public Justice issued a notice of intent to sue AES under RCRA §7002 (please see attached), but has since delayed taking suit. EPA shares Public Justice's concerns. The notice of intent to sue, in fact, quotes extensively from EPA's November 2011 letter to EQB Chairman Nieves, which requested reconsideration of the EQB Resolutions and Notifications that provide the solid waste exemption for Agremax, to incorporate, among other things, risk evaluation and engineering controls.

EQB

In a January 2012 reply to our November 2011 letter, Chairman Nieves stated that EQB was developing draft guidelines for the use of Agremax. EPA responded in February 2012, and indicated that it remained concerned with the ongoing use of Agremax in the absence of appropriate engineering controls. EQB subsequently gave EPA draft guidelines to review, and EPA provided comments in a July 2012 letter. EPA later spoke with EQB Chairman Nieves, and was informed that EPA's comments, along with others received from the public and regulated community, were being evaluated by an independent committee and could not be reviewed by EQB until the committee's review was completed. Chairman Nieves did not, however, know when this would occur.

We also want EQB to revise, with input from EPA, its draft guidelines on Agremax use, to include appropriate engineering and environmental control requirements, so as to fully protect human health and the natural resources of Puerto Rico, consistent with EPA's July 2012 comments.

AES Well Field

Among EPA's concerns is potential leaching from Agremax deposited at an AES well field north of the AES Guayama generating facility (please see attached photographs). EPA notes that, beyond being located in a flood plain, the AES well field presents a number of potential environmental risk factors, because it is situated adjacent to wetlands and a surface water body, the Guaymani river (which EPA understands is used for subsistence fishing), as well as near a canal receiving and distributing water from nearby Lake Melania. It is also located, via the Guaymani River, upstream of several federally endangered species.

[REDACTED]

None, although we understand that P.R. senate hearings regarding Agremax were held in February 2012, and that AES P.R. has settled a lawsuit with the government of the Dominican Republic, which alleged that AES dumped coal ash from the AES Guayama facility along several beaches, causing adverse ecological and human health effects. (It should be noted that the alleged dumping occurred prior to the EQB designation of Agremax as a "product" for use in Puerto Rico.

In May 2010, EPA published a proposed rule to ensure the safe disposal and management of coal ash. Under the proposed rule, the Agency would continue to promote the beneficial reuses of coal ash, in which coal combustion residuals are recycled as components of products instead of being placed in impoundments or landfills. EPA has yet to issue a final rule, and, until a decision is made, EPA's prior determination that coal ash is a solid waste remains in force. However, no RCRA regulatory requirements for coal ash management currently exist, while states may, and in many cases have, made binding regulatory determinations on appropriate coal ash management practices.

In a September 2010 letter, representatives of the environmental group Earthjustice and a private citizen, Ms. Ruth Santiago, Esq., had requested that EPA look into the management of Agremax, stating that the relevant EQB beneficial use determination had been repealed, that Agremax had continued to be used inappropriately as fill, and that such use posed environmental threats. On this basis, they urged that EPA conduct groundwater and other monitoring.

[REDACTED] We subsequently confirmed that the EQB Resolutions and Notifications providing the Agremax solid waste exemption have been, and remain, in effect.

In June 2011, EPA met with the coal combustion product manager for AES P.R., who informed us that the Guayama coal fired power plant mixes all of its bottom and fly ash with the spent lime from its air pollution control equipment, to produce over 4,000 tons/week of Agremax. EPA accompanied several P.R. environmental advocates on site visits

to ten areas where Agremax had been placed on land in the municipalities of Arroyo, Guayama, and Salinas, and observed that Agremax had been disposed of in great amounts over extensive areas, some in proximity to rivers, streams, and wetlands.

We are aware of potentially analogous damage cases documented by EPA and others, involving coal ash disposal. A 2007 EPA report "Coal Combustion Waste Damage Case Assessments" documents known damage cases from the mismanagement of coal ash in unlined landfills and surface impoundments and the subsequent contamination of drinking water aquifers through the leaching and ground water transport of contaminants in the ash. Of these damage cases, two EPA Orders, issued in 2003 and 2004 under the Comprehensive Environmental Response, Compensation, and Liability Act, and a subsequent 2004 citizen suit taken under Section §7002 of the Resource Conservation and Recovery Act, address aquifer and well water contamination by the leaching of toxic constituents from an unlined coal ash landfill in Pines, Indiana.

The EQB Resolutions and Notifications are based on Agremax not failing the RCRA toxicity characteristic leaching procedure (TCLP), as detailed in a 2007 study and report by the P.R. legislature. Typically, coal ash does not fail TCLP. However, EPA has concerns about its toxicity (see below paragraph). EPA has since developed four new test methods for evaluating leaching in the environment, called the leaching environmental assessment framework, or "LEAF", two of which have been published as official EPA test methods on the EPA SW-846 website, and two of which are scheduled for such publication. However, EPA has no plan to replace the regulatory uses of the TCLP (i.e., to make hazardous waste determinations) with the new test methods. Rather, the LEAF tests will be used where TCLP is not required or best suited (the TCLP was designed to model leaching from hazardous waste within a landfill), in order to provide an estimate of contaminant release under various environmental conditions.

In March 2012, EPA, accompanied by EQB, obtained a composite sample of "manufactured" Agremax stored at the AES Guayama facility. The composite sample was analyzed by an EPA-ORD contract laboratory, using two of the LEAF methods. The analytical results gave us a clearer understanding of the heavy metal levels in Agremax under a range of pH conditions. ORD stated that "Agremax" had contaminant levels no different than observed in a "typical" coal ash. ORD also performed follow-up analysis, which confirms these findings.

Milestones

Date	Milestone
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Accomplishments



Fw: Citizens Group Poised to Sue AES Corp. for Illegally Dumping Toxic Waste in Local Residential Areas Unless Demands are Met

Gary Nurkin to: Eric Schaaf

10/10/2012 09:53 AM

Gary H. Nurkin
Assistant Regional Counsel
Waste & Toxic Substances Branch
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----- Forwarded by Gary Nurkin/R2/USEPA/US on 10/10/2012 09:47 AM -----

From: Lenny Grossman/R2/USEPA/US
To: Gary Nurkin/R2/USEPA/US@EPA
Cc: Nicole Kraft/R2/USEPA/US@EPA
Date: 09/27/2012 11:59 AM
Subject: Fw: Citizens Group Poised to Sue AES Corp. for Illegally Dumping Toxic Waste in Local Residential Areas Unless Demands are Met

FYI

The RA will be briefed on this next week by the Division managers.

----- Forwarded by Lenny Grossman/R2/USEPA/US on 09/27/2012 11:58 AM -----

From: Richard Webster <rwebster@publicjustice.net>
To: Lenny Grossman/R2/USEPA/US@EPA
Cc: Lisa Garcia/DC/USEPA/US@EPA, Ruth Santiago <rstgo2@gmail.com>
Date: 09/26/2012 02:19 PM
Subject: FW: Citizens Group Poised to Sue AES Corp. for Illegally Dumping Toxic Waste in Local Residential Areas Unless Demands are Met

Lenny:

Today we sent the attached notice letter to AES about the situation in Guayama, Puerto Rico. Your official copy is in the mail, but I want to suggest directly that its time EPA puts a stop to dangerous waste disposal practices that the government of the Dominican Republic stamped out years ago through litigation. If you would like to discuss the matter further, please feel free to call me anytime.

Richard

